

THE COURTS

Title 204—JUDICIAL SYSTEM GENERAL PROVISIONS

PART IV. ADMISSION TO PRACTICE LAW [231 PA. CODE CH. 71]

Amendment of Rules 203 and 204 of the Pennsylvania Bar Admission Rules; No. 231; Supreme Court Rules; Doc. No. 1

Order

Per Curiam:

And Now, this 23rd day of November, 1999, Rules 203 and 204 of the Pennsylvania Bar Admission Rules are amended to read as follows.

To the extent that notice of proposed rule-making would be required by Pennsylvania Rule of Judicial Administration No. 103 or otherwise, the immediate amendment of Pa. B.A.R. 203 and 204 is hereby found to be required in the interest of justice and efficient administration.

This Order shall be processed in accordance with Pennsylvania Rule of Judicial Administration No. 103(b) and shall be effective immediately.

Annex A

TITLE 204. JUDICIAL SYSTEM GENERAL PROVISIONS

PART IV. ADMISSION TO PRACTICE LAW

CHAPTER 71. PENNSYLVANIA BAR ADMISSION RULES

Subchapter B. ADMISSION TO THE BAR GENERALLY

Rule 203. Admission of Graduates of Accredited and Unaccredited Institutions.

(a) *Bar examination.* The general requirements for permission to sit for the bar examination are:

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Service under subparagraphs (i), (ii) and (iii) may be combined to satisfy the five year service requirement of this subparagraph.

(3) Presentation of a certificate of good standing from the highest court or the agency having jurisdiction over admission to the bar and the practice of law in every state or jurisdiction in which the applicant has been admitted to practice law, stating that the applicant is in good professional standing at the bar of such court or state. An applicant who is disbarred or suspended for disciplinary reasons from the practice of law in another jurisdiction at the time of filing an application for permission to sit for the bar exam shall not be eligible to sit for the bar exam.

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Rule 204. Admission of Domestic Attorneys.

As an alternative to satisfying the requirements of Rule 203 (relating to admission of graduates of accredited and unaccredited institutions), an attorney of another state

may be admitted to the bar of this Commonwealth if the applicant has completed the study of law at and received without exception an earned Bachelor of Laws or Juris Doctor degree from an accredited law school, is a member of the bar of a reciprocal state at the time of filing of the application for admission to the bar of this Commonwealth, and meets the following qualifications:

(1) Presentation of a certificate **of good standing** from the highest court or **the agency [of such state]** having jurisdiction over admission to the bar and the practice of law **in every state or jurisdiction in which the applicant has been admitted to practice law**, stating that the applicant is in good **professional** standing at the bar of such court or such state. **An applicant who is disbarred or suspended for disciplinary reasons from the practice of law in another jurisdiction at the time of filing an application for admission to the bar shall not be eligible for admission to the bar of this Commonwealth.**

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[Pa.B. Doc. No. 99-2081. Filed for public inspection December 10, 1999, 9:00 a.m.]

Title 207—JUDICIAL CONDUCT

PART II. CONDUCT STANDARDS [207 PA. CODE CH. 33]

Notice of Adoption of Formal Opinion 99-1, Formal Opinion 99-2, and Formal Opinion 99-3

Notice is hereby given that the Ethics Committee of the Pennsylvania Conference of State Trial Judges has adopted its Formal Opinion 99-1, Formal Opinion 99-2, and Formal Opinion 99-3, which are set forth as follows.

HOWLAND W. ABRAMSON,

Chairman

Ethics Committee

Pennsylvania Conference of State Trial Judges

FORMAL OPINION 99-1

Campaign Advertising

The Code of Judicial Conduct provides that a candidate for judicial office, including an incumbent judge, should maintain the dignity appropriate to judicial office (Canon 7). Campaign advertising must, therefore, be dignified and appropriate to judicial office. The electorate is best served by advertising which accurately showcases the candidate's credentials. The ads should not pander to the electorate. The candidate must take particular care that the ad does not in any way suggest that he or she will favor any particular group of litigants or make decisions on any basis other than the facts and the law.

A campaign ad may compare a candidate's credentials to those of other candidates for the same office. However, Canon 7 provides that a candidate should not misrepresent his qualifications or any other fact. A candidate must be scrupulously careful that what the ads say about the candidate's opponents is accurate. Once again, the ads

must be dignified. Vituperative personal attacks against one's opponents are *per se* undignified.

The Ethics Committee will not approve or disapprove any particular campaign ad. Moreover, if a candidate seeks and obtains advice from the Committee regarding campaign advertising, the candidate may not claim that the Committee's advice constitutes an endorsement or approval of a particular campaign ad.

A candidate is responsible for any ads published by his or her campaign committee. A candidate should not permit others nor suggest to others that they publish ads which contravene the constraints of the Canons.

- Canon 7 does not specifically proscribe "negative advertising." While in some limited circumstances negative advertising may be appropriate, given the nature of political ads, the Committee strongly discourages negative ads. Given the time limits of television and radio ads (10 and 30 second spots), it is very difficult to say something negative about one's opponent which is not misleading.¹

- An ad should not paint an attorney with the reputation of his or her clients.

- An ad which either directly or by innuendo refers to the ethnic background of one's opponent is improper.

- To suggest that one's opponent favors one gender over another simply because he or she is of the opposite gender of the candidate being promoted by an ad would be a totally baseless falsification. If, on the other hand, a candidate acted in a manner which truly indicated gender bias, that fact would be fair comment.

- An ad can be accurate, but it can also be misleading. An ad which is factually accurate, but is intended to mislead the electorate by giving a false impression about one's opponent violates Canon 7. Once again, the electorate is best served by ads which showcase a candidate's credentials and seek the support of the electorate on the basis of those credentials.

In summary, Canon 7 provides that:

A candidate . . . should maintain the dignity appropriate to judicial office . . . [and] should not make pledges or promises of conduct in office other than the faithful and impartial performance of the duties of the office; announce his views on disputed legal or political issues; or misrepresent his identity, qualifications, present position, or other fact . . .

The principal parameters of campaign advertising are accuracy and dignity.

At the end of the Code of Judicial Conduct is a section entitled "Reliance on Advisory Opinions" which provides that although the advisory opinions of the Judicial Ethics Committee are not binding upon the [Judicial Conduct Board and the Court of Judicial Discipline] and the Supreme Court of Pennsylvania, the opinions shall be taken into account in determining whether discipline should be recommended or imposed. The "rule of reliance" applies to this Formal Opinion. However, before engaging in contemplated conduct, any judge who, out of an abundance of caution, desires a Committee opinion which will provide advice about the judge's particular set of facts and to which the "rule of reliance" will also apply,

¹One could, for instance, say of a sitting judge, "Judge X freed three accused murderers." Though such a statement might be accurate, it might also be misrepresentation by innuendo. If, for instance, Judge X freed the accused murderers because either the judge or the jury acquitted the accused, then the effect of the ad would be to vilify someone for doing what was totally proper. The clear implication of the ad is that the judge treated murderers leniently, which is misleading.

may submit an inquiry to a member of the Committee, ordinarily, a member serving in the judge's Conference zone.

FORMAL OPINION 99-2

Reporting Suspected Tax Evasion

What, if any, is the responsibility of a trial judge to report suspected tax evasion to the appropriate tax authority?

This question was asked of the Committee by the administrative judge of a large metropolitan family court on behalf of the judges of that court. Recognizing the statewide implications of the inquiry, the Committee has decided to issue a formal opinion in this matter.

The Code of Judicial Conduct does not mandate reports of suspected tax evasion to tax authorities. The only mandatory reporting provision in the Code provides that:

A judge should take or initiate appropriate disciplinary measures against a judge or lawyer for unprofessional conduct of which the judge may become aware.

Clearly, this provision of the Canons does not apply to suspected tax evasion or fraud. The court is not an agent of the tax authorities.

In cases of obvious and egregious fraud, a judge should consider the possibility that his or her failure to report the fraud may undermine confidence in the integrity of the judiciary.

Canon 2 provides that:

A judge should respect . . . the law and should conduct himself at all times in a manner that promotes public confidence in the integrity . . . of the judiciary.

The decision as to whether and when a case rises to such a level must be made by the judge on a case-by-case basis.

If a judge makes a decision to report such facts to the appropriate tax authority, it is the recommendation of the Committee that the judge do simply that—report the facts without judgment.

At the end of the Code of Judicial Conduct is a section entitled "Reliance on Advisory Opinions" which provides that although the advisory opinions of the Judicial Ethics Committee are not binding upon the [Judicial Conduct Board and the Court of Judicial Discipline] and the Supreme Court of Pennsylvania, the opinions shall be taken into account in determining whether discipline should be recommended or imposed. The "rule of reliance" applies to this Formal Opinion. However, before engaging in contemplated conduct, any judge who, out of an abundance of caution, desires a Committee opinion which will provide advice about the judge's particular set of facts and to which the "rule of reliance" will also apply, may submit an inquiry to a member of the Committee, ordinarily, a member serving in the judge's Conference zone.

FORMAL OPINION 99-3

Judges and the Media

A judge should not comment publicly about a proceeding pending before any court. Canon 3 provides, in pertinent part:

A judge should abstain from public comment about a pending proceeding in any court, and should require similar abstention on the part of court personnel subject to his direction and control. This subsection

does not prohibit judges from making public statements in the course of their official duties or from explaining for public information the procedures of the court.

Commentary. "Court personnel" does not include the lawyers in a proceeding before a judge. The conduct of lawyers is governed by DR 7-107 of the Code of Professional Responsibility.

The Committee notes that Pennsylvania's prohibition against public comment about pending proceedings is more restrictive than the Model Code of Judicial Conduct adopted by the American Bar Association in 1990. The Model Code provides as follows:

A judge shall not, while a proceeding is pending or impending in any court, make any public comment that might reasonably be expected to affect its outcome or impair its fairness or make any nonpublic comment that might substantially interfere with a fair trial or hearing (emphasis added).

The Committee suggests that the impact/fairness test of the Model Code is a good guide for deciding when a judge may make public statements in the course of his or her duties or explain the procedures of the court as permitted by Pennsylvania's Code. If there is a danger that the statement may affect the outcome of a proceeding, the judge must refrain from public comment.

Canon 3 also provides very extensive and detailed regulations with regard to the relationship between the court and the electronic media.

A judge should prohibit broadcasting, televising, recording or taking photographs in the courtroom and areas immediately adjacent thereto during sessions of court or recesses between sessions . . .

The Canon then goes on to outline certain circumstances in which electronic broadcasting is permitted in "trial court non-jury civil proceedings." The Canon specifically excludes support, custody and divorce proceedings from his section.

A judge must be particularly circumspect with regard to criminal matters. Rule 326 of the Rules of Criminal Procedure provides specific guidelines to be followed in widely publicized or sensational cases. Rule 327 places specific limitations on court personnel. Finally, Rule 328 places very specific limitations on photography and broadcasting in the courtroom and its environs:

The taking of photographs in the courtroom or its environs or radio or television broadcasting from the courtroom or its environs during the progress of or in connection with any judicial proceedings, whether or not the court is actually in session, is prohibited. The environs of the courtroom is defined as the area immediately surrounding the entrances and exits to the courtroom.

This rule is not intended to prohibit the taking of photographs or radio or television broadcasting of proceedings such as naturalization ceremonies or the swearing in of public officials which may be conducted in the courtroom.

Once again, while the rules carefully circumscribe the coverage of matters pending before the court, they do not completely prohibit contact with the media. Canon 3 specifically permits public discussion of the work of the court. If, for instance, the court is establishing a new program, a judge may, in the course of his or her responsibilities, properly discuss the new program with

the media, as long as the judge is careful to refrain from comment on any pending matter.

At the end of the Code of Judicial Conduct is a section entitled "Reliance on Advisory Opinions" which provides that although the advisory opinions of the Judicial Ethics Committee are not binding upon the [Judicial Conduct Board and the Court of Judicial Discipline] and the Supreme Court of Pennsylvania, the opinions shall be taken into account in determining whether discipline should be recommended or imposed. The "rule of reliance" applies to this Formal Opinion. However, before engaging in contemplated conduct, any judge who, out of an abundance of caution, desires a Committee opinion which will provide advice about the judge's particular set of facts and to which the "rule of reliance" will also apply, may submit an inquiry to a member of the Committee, ordinarily, a member serving in the judge's Conference zone.

[Pa.B. Doc. No. 99-2082. Filed for public inspection December 10, 1999, 9:00 a.m.]

Title 249—PHILADELPHIA RULES

PHILADELPHIA COUNTY

President Judge General Court Regulation No. 99-03; Amendment of Phila.R.Civ.P.No. 2561

Order

And Now, this 24th day of November, 1999, the Board of Judges of Philadelphia County having voted at the Board of Judges' Meeting held November 18, 1999 to amend Phila.R.Civ.P.No. 1028(B), *It is Hereby Ordered and Decreed* that Phila.R.Civ.P.No.1028(B) is amended as follows.

This General Court Regulation is promulgated in accordance with Pa.Civ.P.No. 239 and shall become effective thirty (30) days after publication in the *Pennsylvania Bulletin*. The original General Court Regulation shall be filed with the Prothonotary in a docket maintained for General Court Regulations issued by the President Judge of the Court of Common Pleas, and copies shall be submitted to the Administrative Office of Pennsylvania Courts, the Legislative Reference Bureau and the Supreme Court's Civil Procedural Rules Committee. Copies of the Regulation shall also be submitted to American Lawyer Media, *The Legal Intelligencer*, Jenkins Memorial Library and the Law Library for the First Judicial District.

ALEX BONAVITACOLA,
President Judge

Amendment to Philadelphia Rule of Civil Procedure No.
1028 (B) :

Rule 1028. Preliminary Objections.

* * * * *

(B) In the event that the preliminary objections are not filed with Motion Court within thirty (30) days after filing with the Prothonotary, the party against whom the objections are asserted may file with the Motion Court a praecipe, [**accompanied by current docket entries**]

and a proposed order, requesting that the objections be overruled. . . .

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[Pa.B. Doc. No. 99-2083. Filed for public inspection December 10, 1999, 9:00 a.m.]

Title 25—LOCAL COURT RULES

ERIE COUNTY

Revision and Restatement of Rules of Civil Procedure

Order

And Now, this 22nd day of November, 1999, the following revisions and additions to the Rules designated as the Rules of Civil Procedure for the Court of Common Pleas of Erie County, Pennsylvania, are hereby approved, adopted and promulgated as the Rules of Court. These changes, revisions and deletions shall become effective thirty days after the publication of the same in the *Pennsylvania Bulletin*, and they shall apply to all actions pending at the time.

MICHAEL M. PALMISANO,
Acting President Judge

Rule 212.1. Pre-Trial Procedure.

(a) *Scope.* This Rule shall encompass all civil actions, except actions where jurisdiction lies in the Family/Orphans Court Division.

(b) *Case Management Orders (CMO)*

1. *Case Management Orders—General*

(a) At the time of judicial assignment, the Office of Court Administration shall issue a CMO designating dates for the close of discovery, the filing of pre-trial statements, and a proposed trial term.

(b) At any time prior to judicial assignment, the parties may agree to the entry of a CMO by filing a stipulation with the Office of Court Administration and the Prothonotary.

(c) Following the entry of the CMO, any request for modification shall be done by motion filed with the Prothonotary and mailing or delivering a copy to the assigned judge.

2. *Case Management Orders—Time Limitations*

(a) All CMO's, except those requested by stipulation, which are issued by the Office of Court Administration, shall provide the following time limitations:

(i) Close of discovery within two hundred forty (240) days of the issuance of the CMO.

(ii) Plaintiff's pre-trial statement filed within thirty (30) days of the close of discovery.

(iii) Defendant's pre-trial statement filed within sixty (60) days of the close of discovery.

(iv) Proposed trial term within one hundred twenty (120) days of the discovery, or as close thereto as the availability of trial terms may allow.

(b) If a case has been accepted by the Court as "complex," all CMO's shall designate dates consistent with the following time limitations:

(i) Close of discovery is five hundred forty (540) days from the issuance of the CMO.

(ii) Plaintiff's pre-trial statement filed within forty five (45) days of the close of discovery.

(iii) Defendant's pre-trial statement filed within ninety (90) days of the close of discovery.

(iv) The proposed trial term within one hundred eighty (180) days of close of discovery, or as close thereto as the availability of trial terms may allow.

(c) If a case has been accepted by the Court as "expedited," all CMO's shall designate dates consistent with the following time limitations:

(i) Close of discovery is ninety (90) days from the issuance of the CMO.

(ii) Plaintiff's pre-trial statement filed within fifteen (15) days of the close of discovery.

(iii) Defendant's pre-trial statement filed within thirty (30) days of the close of discovery.

(iv) The proposed trial term within ninety (90) days of close of discovery, or as close thereto as the availability of trial terms may allow.

(d) A party may request that a case be designated as complex or expedited by the filing of a stipulation or motion.

(e) All cases where the amount in controversy is within the limits for mandatory arbitration shall be designated as "expedited" cases and CMO's issued accordingly.

(c) *Settlement Conference.* A party may request that the assigned judge conduct a settlement conference at any time after the filing of the last responsive pleading.

(d) *Trial Depositions*

1. All depositions for use at Trial shall be completed no later than 10 days preceeding the beginning of the trial term for which the case is listed.

2. All objections to trial deposition testimony shall be provided to the court no later than 2 days prior to the day of trial.

(e) *Motions in Limine.* All motions in limine, including motions to resolve objections to depositions to be used at trial, must be presented to the Court no later than ten (10) days preceding the beginning of the trial term in which the case is listed.

(f) *Certification For Trial*

1. These certification procedures apply to all civil jury and non-jury cases.

2. In order to have a case assigned to a particular trial term, all counsel or parties must certify the case as ready for trial by filing with the Prothonotary and serving upon the Court Administrator a certification in substantially the form contained herein and designated "Certification I."

3. If a party has failed to comply with the timetables established in the CMO or has failed to sign a Certification I after being requested to do so in writing, a party wishing to place the case on the trial list must file a certification in substantially the same form contained herein and designated "Certification II."

4. A Certification I or II indicating readiness for trial shall be filed with the Office of Court Administration and the Prothonotary no later than sixty (60) days prior to the beginning of the proposed trial term.

5. All "Certification II's" shall be forwarded to the assigned judge for disposition.

Rule 212.2. Pre-Trial Statements.

(a) In addition to the requirements set forth at Pa.R.C.P. 212.2, all Pre-Trial Statements shall contain:

- 1. A list of any unusual legal issues.
- 2. Where appropriate, authorization to other parties to examine pertinent records unless earlier provided.
- 3. For any party asserting a claim for damages, the method of calculation and how damages will be proven.
- 4. For any party defending a claim for damages, any defenses to the damage claims.

5. *Filing Procedure.* The original Pre-Trial Statements are to be filed in the Prothonotary's Office. No copy shall be forwarded to the assigned judge.

Rule 212.3. Pre-Trial Conference.

(a) Upon the completion of the trial list, the assigned judge shall schedule a pre-trial conference. Attendance at the conference is mandatory for all counsel, and all persons needed to authorize or approve settlement shall be present or available by telephone.

(b) In cases proceeding to trial without a jury, a pre-trial conference shall be scheduled at the discretion of the assigned judge or upon request of a party.

(c) At pre-trial conference, in addition to the matters included in Pa.R.C.P. 212.3(b), the Judge:

- 1. Shall explore, with counsel and the parties, the possibility of settlement.
- 2. May decide all remaining motions and requests for relief.

Rule 212.4. Trial Lists and Continuances.

1. After the deadline for certification has passed, the Office of Court Administration, in coordination with the assigned judge, shall list all certified cases for trial.

2. When a case is listed for trial, it shall not be continued except for just cause. Except in the case of exigent circumstances, all motions for continuance must be made at least ten (10) days before the start of the trial in non-jury cases. All motions for continuance must include the reasons for the request and must be presented to the assigned judge.

3. Motions for continuance which are being made with the agreement of all counsel must be signed by all counsel or parties.

FORMS

CERTIFICATION I

We the undersigned, counsel for the parties in the above case, hereby certify that:

- 1. The above action is ready for trial;
- 2. All outstanding motions have been resolved;
- 3. All pre-trial statements are filed;
- 4. Counsel have met and discussed settlement of this matter.

Plaintiff's attorney (date)

Defendant's attorney (date)

Additional Defendant's attorney (date)

CERTIFICATION II

- 1. The undersigned requests that the case be placed on the Trial List for the _____ (month) term.
- 2. A case management order was entered providing for a proposed trial term of _____ (month) .
- 3. A request to file a Certification I has been made of all parties.
- 4. All parties have agreed to file a Certification I except:

5. The case is otherwise ready for trial.

Signature (Counsel or Party)

Date

[Pa.B. Doc. No. 99-2084. Filed for public inspection December 10, 1999, 9:00 a.m.]